COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS BUREAU INVESTIGATIVE REPORT

DATE
November 27, 1991

FILE NO.
091-1117

SUBJECTS

ABERCROMBY, Joseph, Deputy #[redacted]
EARL, Guy, Sergeant #[redacted]
MOULTRIE, Vincent, Deputy #[redacted]
THOMPSON, Thomas, Deputy #[redacted]
West Hollywood Station
Field Operations Region II

COMPLAINANTS

William R. Waller, Chief
Field Operations Region II

CHARACTER OF CASE

SUPERVISORS; RESPONSIBILITY FOR COMPLETION OF DUTIES; CHAIN OF RESPONSIBILITY; DELEGATION OF AUTHORITY; GENERAL BEHAVIOR; OBEDIENCE TO LAWS, REGULATIONS, AND ORDERS; USE OF FORCE; USE OF FIREARMS; INCOMPETENCE

LOCATION
San Vincente Boulevard and Melrose Boulevard, West Hollywood, California

REFERENCE

William R. Waller, Chief
Field Operations Region II

INVESTIGATOR

Sergeant Stephen B. Johnson
Internal Affairs Bureau

SYNOPSIS
This investigation concerns an on-duty Deputy Involved Shooting involving uniformed patrol deputies from West Hollywood Station. The incident occurred at the intersection of San Vicente Boulevard and Melrose Boulevard in the City of West Hollywood at approximately 0123 hours on November 27, 1991. The four subjects involved were Sergeant Guy Earl, and Deputies Joseph Abercromby, Thomas Thompson, and Vincent Moultrie.

Sergeants Stephen B. Johnson and Edward Allen of the Internal Affairs Bureau were dispatched to the scene of the shooting the night of the incident and conducted an immediate Deputy Involved Shooting evaluation, refer to Exhibit "K".

SUBMITTED BY

Bert J. Cueva
Internal Affairs Bureau

REFERRED FOR RECOMMENDATION TO

Field Operations Region II

STATUS OF SUBJECTS
On duty

INTERNAL AFFAIRS BUREAU INVESTIGATIVE REPORT

SYNOPSIS Cont.

The incident involves a situation where the deputies respond to a call of a man passed out in a vehicle, stopped in the middle of the street. The deputies arrive and find that the man is unconscious in a gray pick-up truck with it's engine running, stopped in the number one lane of traffic of westbound Melrose Boulevard at the intersection with San Vicente Boulevard. They see that the man is holding a .38 calibre revolver in his right hand with his finger on the trigger.

The deputies talked about how to handle the incident examining different alternatives. It was decided that the suspect would be physically disarmed by opening the driver's door and reaching in and grabbing the weapon away from him. Deputy Sam Young would attempt to grab the weapon and Subject Guy Earl would act as cover and the designated shooter.

When Deputy Young opened the door and attempted to grab the weapon, the suspect awakened and fought with Deputy Young for possession of the weapon. The suspect vehicle then suddenly accelerated and lunged forward into a parked radio car. Subject Earl saw the struggle for the gun and fired at the suspect believing the suspect was going to shoot Deputy Young. The other three deputies then fired at the suspect mortally wounding him. None of the deputies received serious injuries during the confrontation.

The Sheriff's Homicide Bureau conducted a criminal investigation and their investigative file is included in this report in the original shooting evaluation under Exhibit "K". (Refer to Exhibit "R" within the shooting evaluation for the report)

A letter of opinion was issued by the Los Angeles County Deputy District Attorney Eloise Phillips of the Special Investigations Division on April 24, 1992. In her letter she states the actions of the deputies involved in the incident were not so unreasonable as to be unlawful and that they consider the matter closed and will take no further action. Refer to Exhibit "J" for a copy of the letter.

An Administrative investigation was requested by Acting Chief Commander Mark Squires of Field Operations Region II on June 11, 1992.

FINDINGS

To assist the reader, these findings will be broken into three parts. The first part is titled THE APPROACH and describes the events leading up to the shooting. THE SHOOTING describes the shooting itself and the statements of the parties involved. THE AFTERMATH covers some of the witness statements, autopsy information, shooting facts, and training issues.

THE APPROACH

Witness [redacted] said that on November 27, 1991, at approximately 0100, he was driving westbound on Melrose Boulevard approaching San Vicente Boulevard. He said he saw a pick-up truck stopped on westbound Melrose Boulevard and that the driver was slumped over and appeared to be asleep. [redacted] said he saw at least two other motorists pull in behind the truck and honk their horns in an effort to awaken the driver, however the driver did not move. Refer to the diagram made by the witness, Exhibit "G". He said he does not remember which lane of traffic the vehicle was stopped in. He said he could hear the engine running on the truck. He said he does not remember if the truck's headlights were on. He said the light was green for westbound traffic. He said he drove westbound past the motorist and then turned around and drove back to see if he had moved. [redacted] said he saw that the motorist was still unconscious. [redacted] said he drove north on San Vicente to a pay phone on the west side of San Vicente Boulevard in front of West Hollywood Park. Refer to "X" on the witness diagram, Exhibit "G".

[redacted] said he telephoned the West Hollywood Sheriff's Station and advised them of a man asleep in his vehicle at the light on westbound Melrose Boulevard at San Vicente Boulevard. Refer to station log for the incident, Exhibit "H".

[redacted] said he drove southbound on San Vicente and turned right on Melrose and then made a u-turn and parked on the south side of Melrose west of San Vicente facing eastbound. Refer to "#1" on the witness diagram, Exhibit "G". He said he does not recall how far away he was from the deputies and the unconscious motorist. [redacted] said he watched as the Sheriff's deputies arrived.

On 11/27/91 at approximately 0102 hours, a call was dispatched at West Hollywood Station of a drunk asleep at the wheel of a truck stopped in the intersection of San Vincente Boulevard and Melrose Avenue. Refer to Exhibit "K" for a printout of the call. The call was assigned to Deputy Sam Young working unit #91T1.

Witness Young stated he drove westbound on Melrose Avenue to San

Vincente Boulevard. He said he saw a gray pick-up truck stopped in the #1 lane for westbound traffic on Melrose Avenue, even though the signal was green for east/west traffic. Young said he pulled his patrol vehicle in behind the pick-up truck and was approximately one-half car length behind it. Young said the vehicle was newly purchased and had no license plates.

He said he exited his patrol vehicle and approached the pick-up truck on the driver's side. Young said he saw that the truck was occupied with a single male white occupant, later identified as Suspect Charles Allen King. He said the suspect was seated in the driver's seat and was leaning back from the steering wheel with his head tilted down. Young said he saw that the driver's side window of the truck was partially rolled down approximately half way. He said he could smell the strong odor of an alcohol beverage emitting from the vehicle. Young said the vehicle had it's lights on and the engine was running.

Young said at approximately the same time Deputy Vincent Moultrie, working unit #93T2, arrived and parked his patrol vehicle, #58497, next to his facing westbound in the left turn bay of Melrose Avenue. Young said Moultrie got out of his car and asked him what he had. Young said he replied to Moultrie that he thought he had a drunk driver that had passed out behind the wheel of the vehicle. Young said he could only see the upper torso and left side of Suspect King at that time and did not see any weapon.

Young said Deputy Holden working unit 91B, arrived and parked his vehicle in front of the suspect vehicle. Young said Holden approached the pick-up from the front passenger side. Young said Holden looked into the truck cab and said that the suspect had a gun. Young said he moved up on the drivers door of the truck and looked at the suspect's right side. Young said he saw that the suspect was holding a blue steel revolver in his right hand with his index finger wrapped firmly on the trigger. He said the gun was down on the seat resting next to the suspects right leg with the barrel facing towards the front of the vehicle.

Deputy Terence Holden said after he saw the weapon in the supect's hand he took cover behind the passenger side of his patrol vehicle. Holden said Moultrie and Young drew their weapons and took cover back at Deputy Young's patrol vehicle.

Holden said Young then requested assistance. Holden said he suggested to Young that they block off the suspect vehicle. Holden said he moved his patrol vehicle in front of the suspect vehicle head-on so the suspect could not drive forward. Holden said he took cover behind vehicle #58497, which was parked to the rear of the drivers side of the suspect vehicle.

Witness [redacted] said after the deputies arrived, he drove

eastbound on Melrose past the deputies and made a u-turn and drove westbound on Melrose and parked on the north side of Melrose facing west behind the deputies and the motorist. Refer to "#2" on the diagram completed by the witness, Exhibit "G". [redacted] said he remained in his vehicle and turned his headlights off. [redacted] said he saw at least three, and possibly more, radio cars surrounding the pick-up truck.

[redacted] said he was contacted by an unknown uniformed deputy and he said he told the deputy he was the one who called. He said the deputy told him to wait there. He said he saw the deputies "creep" up to the pick-up truck. [redacted] said he was watching a deputy who was stopping traffic and pedestrians and was not looking at the pick-up truck. [redacted] said he saw two pedestrians standing on the south side of Melrose Boulevard east of San Vicente Boulevard.

Witness Deputy Young said Sergeant Guy Earl #[redacted] and Deputy Joseph Abercromby #[redacted] arrived in response to his assistance request in separate vehicles. Young said he informed Sergeant Earl of the circumstances and Earl looked inside and verified that the suspect was holding onto a firearm. Young said the suspect was still unconscious.

Young said he then started formulating a plan to handle the incident because he was the assigned handling unit. He said he explored a variety of options. Young said he considered pulling back behind the pick-up truck to a position behind their radio cars and calling the suspect out of the truck, similar to a "Felony Vehicle Stop." Young said he disregarded this plan for three reasons. First, he was concerned that the suspect would awaken and commence firing the firearm; second, he was concerned the suspect would awaken and drive off; and third, he did not want to give up the ground and position they had at the cab of the truck which he felt was a distinct advantage.

Young said he discounted using a sap to strike the suspect because he felt their was no guaranty the sap blows would prevent the suspect from firing his weapon at them. Young said he discounted the use of the "Taser". He said the operator would have to open the drivers door and expose himself to fire the "Taser". He said there was no guarantee the darts would penetrate and be effective in totally incapacitating the suspect and preventing him from firing the weapon. Young said he felt that none of these alternatives would work because none of them prevented the suspect from awakening and firing the weapon at them.

Young said he reached the conclusion that the only way to prevent the suspect from firing the weapon when he awakened was to go into the vehicle and immediately wrestle the weapon away from the suspect.

Young said he told Sergeant Earl that he (Young) was going to try and take the gun away from the suspect by entering the cab and immediately attempt to wrestle the weapon away from the suspect. Young said he told Earl that Earl would be his one and only designated shooter who would back him up. He said he told Earl to be directly behind him when he opened the drivers door of the pick-up truck and attempt to retrieve the weapon. Young said Earl agreed to his plan and no other plan was presented by Earl.

Subject Sergeant Guy Earl stated that on November 27, 1991 he was assigned to work as the early morning field sergeant at West Hollywood Station. He said he does not recall if he was wearing protective body armor that evening. He said he normally does not wear it and carries it in his vehicle and that it is not mandated by the department. He stated he was inside West Hollywood Station when he heard over the radio a call for assistance concerning a man with a gun in a vehicle from Witness Deputy Sam Young at the intersection of San Vicente Boulevard and Melrose Boulevard.

Subject Earl said his immediate thought at the time was to get this person disarmed. Earl said he considered calling the Special Enforcement Bureau to handle the incident. He said he discarded the idea for the following reasons:
-The response time would be too long.
-He said he was afraid the time it took them to arrive the suspect could start shooting. He said he was concerned about the suspect shooting and stray rounds hitting innocent persons. He said he was afraid the rounds would go south into the residential area south of Melrose Boulevard behind the closed commercial buildings which line Melrose Boulevard. He said he was also concerned about the parking lot on San Vicente Boulevard north of Melrose Boulevard. Earl said Melrose is bordered by closed commercial businesses, however he said he felt a stray shot could go in between the buildings into the residential neighborhood. He said the parking lot on San Vicente is used by bar patrons.
-He said he did not know when or if the suspect would wake up and if he would start shooting. He said he could not wait for their response and attempt to handle it as a barricaded suspect as it would be too dangerous.

Earl said they did not try to awaken the suspect. He said they did not attempt to use voice commands, the public address system, or sirens on the radio cars to awaken the suspect. Earl said that he had heard one or more possible radio cars arrive "code three" with lights and siren on prior to his arrival and that had not awakened the suspect. Earl said the option of bumping the suspect vehicle with the pushbar of a radio car was not utilized or discussed. Earl said he did not think to box the suspect's vehicle in with radio cars.

Earl said he dismissed mentally, without discussing it with the deputies, the option of using a "felony vehicle stop" configuration. He said he discarded the option of making a public address announcement and calling the suspect out because he was fearful what the suspect would do if he was awakened.

Subject Earl said he considered using the "Arwen" and the "Taser", however he discarded those ideas.

Earl said he next considered using a shotgun to disarm the suspect. He said he thought of possibly using the butt of the shotgun to hit the suspect in the arm/hand to dislodge the handgun. He said he stood at the left rear of the suspect vehicle and held the shotgun and thrust it feeling its weight. He said he discarded that approach as too hazardous.

Subject Earl said Deputy Young suggested that he (Young) could open the driver's door of the suspect vehicle and could reach in and disarm the suspect. Earl said Young asked him to be the designated shooter. Earl said he felt this was the most plausible way to disarm the suspect. Earl said he made the decision to use the tactic.

Earl said this situation was something he had never encountered in his entire career. He said he had never received any training in how to handle this situation. Earl said at the time he vaguely remembered hearing something from someone about a similar tactic being used at the Advanced Officer Training Bureau. He said it was a similar situation in which the suspect was passed out in a vehicle with a weapon close to them in the vehicle. He said the suspect did not have his hand on the gun in the training scenario.

IAB NOTE: Training records for Sergeant Earl show that he attended Laser Village Training on [redacted] Records for the other three Subject's, Abercromby, Thompson, and Moultrie, show that they [redacted] Laser Village training prior to the shooting. The records can be found in the original shooting evaluation, Exhibit "K", under Exhibits "M,N,O,P".

Earl said he told the other deputies he was going to be the designated shooter and for them to go the rear of the suspect vehicle and take cover. Earl said he told the three other Subjects, Abercromby, Moultrie, and Thompson this information. He said he believed there were other deputies who heard it, however he did not know who they were.

Earl said he did not give the deputies individual instructions as to what to do or where to position themselves. He said he did

not give them instructions as to when or when not to shoot. He said he did not disagree where the deputies had positioned themselves, however he does not recall exactly where the deputies had positioned themselves. Earl said he did not position anyone on the passenger side of the suspect vehicle and he does not recall any deputies standing on that side of the vehicle. He said he believed that because of their training the deputies present would know what to do. He said he believed their training would guide them not to allow themselves to be in a cross-fire with any other deputy. He said he did not feel he had to give specific instructions to the deputies as to when they should fire or not fire.

Earl said he told them he was going to be the designated shooter. Earl said he understood this to mean that if the suspect needed to be shot, the designated shooter does the shooting unless something goes wrong and happens to the designated shooter.

Subject Deputy Joseph Abercromby said he responded to the location from the area of Melrose Boulevard and La Cienega Boulevard. He said he responded code three with his siren and lights on and turned his siren off approximately fifty yards from the suspect vehicle.

Abercromby said he walked up to a group of deputies and was told by someone, unknown who, that the man in the suspect vehicle was passed out and had a handgun in his right hand. Abercromby said he went back to his patrol vehicle, obtained the shotgun, and returned to the group of deputies. He said he remembers one of the deputies pulling one of the radio cars in front of the suspect vehicle, and placing another radio car behind it so if the suspect attempted to drive away, he could not. He said he remembered that the engine was running on the suspect vehicle.

Abercromby said a discussion about what to do to safely remove the weapon from the suspect and take him into custody then ensued. He remembers the following personnel being present: Witness Deputies David Do and Sam Young, Subjects Sergeant Guy Earl, Deputy Thomas Thompson, and Deputy Vincent Moultrie. He said Sergeant Earl then brought up options of how to handle the situation.

Subject Abercromby said Subject Sergeant Earl brought up the idea of using the "Taser" and Earl immediately discounted it. He said Earl said the "Taser" may not effect the suspect to where he was completely incapacitated. He said Earl brought up using the "Arwen" gun and discounted it. He said the reason was because the only shot that would completely incapacitate the suspect was a head shot and that would be lethal force. Abercromby said Earl discussed knocking the weapon out of the suspects's hands with the butt of a shotgun. He said Earl discounted that because even though they may knock the weapon out of the suspect's hands, they

would not have control over it. Abercromby said Subject Thomas Thompson brought up the idea of opening the driver's door and striking the suspect with a sap or punching him and then grabbing the weapon. Abercromby said Earl discounted that because if they could not stun him right away, they would have an awake, armed and angry suspect.

Subject Abercromby said someone suggested calling the Special Enforcement Bureau and that was ruled out because they thought S.E.B. would not roll out on a misdemeanor suspect only. He said Sergeant Earl said they did not have time to wait for S.E.B.

IAB NOTE: Below is the manual section pertaining to Special Weapons team call-outs.

5-06/110.65 Special Weapons Team

For expediency, any sworn member of this Department may request a Special Weapons Team (SWT). However, authorization to deploy the Team must be made by the Incident Commander at the scene.

The Special Enforcement Bureau (SEB) shall be responsible for providing comprehensive SWT coverage. Requests for a Special Weapons Team shall be made through the Special Enforcement Bureau Desk. Specific information relating to the incident shall be provided.

Special Weapons Teams are designed to save lives. This includes the lives of law enforcement personnel who become faced with unusually hazardous situations, members of the community whose security is severely threatened by these situations, and the lives of the suspects.

Special Weapons Teams are available to assist other units with incidents or operations when the safety of the officers, members of the community, or involved parties are likely to be better served by their use. Situations wherein Special Weapons Teams are typically employed include:

- Barricaded or contained suspect(s) who are believed to be armed
- Hostage incidents
- Sniper situations
- Potentially violent persons who are believed to be armed (including mentally ill, threatened suicides, unknown circumstances, etc.)
- High risk arrest and search warrants
- Protection operations involving high risk persons

or sites.

Whenever a Special Weapons Team is requested, the requesting Unit's Commander, Area Commander, or Duty Commander, shall be notified.

Abercromby said the idea of backing off and calling the suspect out of the vehicle was discussed. Abercromby said this idea was discounted because of the close proximity of residences and of possible bar patrons returning to their vehicles. He explained that the area is lined with closed commercial businesses, however there are residences behind the businesses on adjoining side streets south of Melrose Boulevard and east and west of San Vicente Boulevard. He said they were concerned about the public parking lot on the west side of San Vicente Boulevard just north of the intersection. He said bar patrons park there and frequent the parking lot at that time of night. He said they were afraid if they startled or awakened the suspect, he would come up shooting. Abercromby said the area remains the same today with no new structures being built or torn down.

Abercromby said they had positioned units to stop all vehicle and pedestrian traffic. He said units were positioned on Melrose Boulevard and San Vicente Boulevard to the east, west, north, and south.

Abercromby said the public address system and the sirens of the radio cars were not used to awakened the suspect. He said he had driven within fifty yards of the suspect vehicle with his siren on when arriving and didn't believe a siren would arouse him.

Abercromby said Earl said this was a degenerating situation that required immediate action.

Abercromby said he believed Sergeant Earl suggested they go up to and into the vehicle and physically disarm the suspect. Abercromby said Witness Deputy Sam Young said he would disarm the suspect because he was the handling unit. He said the idea was to take the weapon out of the problem. Abercromby said Sergeant Earl was designated as the primary back-up to Young as the designated shooter. Abercromby said Earl told them to take covering positions and to act as back-up. Abercromby said he understood this to mean he should take cover and act as a back-up shooter if needed. Abercromby said Earl told him he (Earl) would be the designated shooter. Abercromby said this meant to him he should not fire unless there were mitigating circumstances in which his life or someone else's life is in danger.

Abercromby said he did not remember if Sergeant Earl said anything about what to do if he (Earl) or the suspect started shooting.

Abercromby said he took a position at the rear of the suspect vehicle standing behind the tailgate on the driver's side with the shotgun pointed forward. He said Subject Deputy Thompson was to his north and right working towards the passenger side of the suspect vehicle.

Abercromby said there was a mistake in his original statement to the Homicide Bureau investigators. He said he told the investigators that Earl was first in the approach to the suspect vehicle and Young was behind Earl. He corrected that and stated that Young went first and Earl was behind Young covering him as they approached.

Abercromby said the passenger door and rear window of the suspect vehicle were checked by unknown deputies and they were both locked.

Abercromby said he deployed the shotgun based on his basic academy training. He said he felt the devastating power of the weapon at close range and penetrating power of the weapon was needed. He said he felt the spread pattern was small enough considering the short range.

Subject Deputy Thomas Thompson stated he was booking a prisoner at West Hollywood Station with his partner, Witness Deputy David Do, when he heard a request for assistance from a unit at San Vicente Boulevard and Melrose Boulevard regarding a man with a gun in a vehicle. Thompson said they responded to the incident with their lights and siren and drove past the suspect vehicle. He said he drove within thirty to fifty feet of the suspect vehicle with his siren on.

Thompson said he parked his vehicle and met with Subject Sergeant Guy Earl and the other deputies present and discussed what to do. Thompson said he was told by Deputy Sam Young the suspect was unconscious in the vehicle and was holding a revolver in his right hand with his finger on the trigger.

Thompson said Sergeant Earl talked about various options of how to handle the situation with all the deputies present. Thompson said they all provided input as to ideas of what to do. They included use of the "Taser", use of the "Arwen" gun, using the shotgun to hit the suspect's hands and dislodge the weapon, and possibly striking the suspect with a sap. He said Sergeant Earl discarded those methods one by one as they talked about them and gave reasons why he felt they would not work.

Thompson said Deputy Sam Young came up with the idea that he (Young) would go up to the cab of the truck and physically disarm the suspect while Subject Sergeant Earl acted as a designated shooter to cover him. Thompson said this was the agreed upon plan.

Thompson said he does not remember attempting to use the public address system or siren of the radio cars to arouse the suspect. He said he does not recall if it was ever discussed as a option to call the suspect out of the vehicle using voice commands. Thompson said he did not think of it at the time.

Thompson said he was told by Sergeant Earl to go to the rear of the truck to provide cover in case something went wrong. Thompson said they were not told by Sergeant Earl where to position themselves beyond being at the rear. Thompson said he was given no further instructions by Sergeant Earl. Thompson said he was not specifically told what to do if Sergeant Earl or Deputy Young were involved in a shooting. Thompson said he believed Earl was the designated shooter and if anything went wrong, Earl was the one to shoot the suspect. Thompson said he believed that if Earl could not control or stop the suspect, he was to step in and assist him.

Thompson said he had not heard of this tactic before and had not received any training in how to handle this situation using this tactic of physically disarming an armed suspect inside of a vehicle.

Thompson said Subject Deputy Joseph Abercromby went to the rear tailgate of the suspect vehicle and positioned himself behind it on the driver's side. Thompson said he positioned himself at the rear tailgate in a standing position on the passenger side. He said there were no other deputies in his line of fire. Thompson said Subject Deputy Vincent Moultrie was positioned parallel to him and to his right off on the side of the truck approximately an arms length away. Thompson said he does not recall where his partner, Deputy Do, was positioned.

Subject Deputy Vincent Moultrie said Subject Sergeant Guy Earl arrived and they started talking about what plan would be used to handle the situation.
Moultrie said he checked the rear window of the cab of the suspect vehicle and saw that it was locked. He said he tried to open it with his pocket knife and could not get it open. He said if he could it open, the plan was to reach in and grab the gun away from the suspect. He said he does not remember if it was discussed with the group, however he believes he talked with Sergeant Earl about it. Moultrie said they discussed breaking open the window on the passenger side of the vehicle, however that idea was discarded.

Moultrie said his attention was divided between attempting to watch the suspect and listening to Sergeant Earl, Deputy Young, and Deputy Abercromby discuss what they wanted to do. Moultrie said he remembered the option of using a "Taser" or an "Arwen" gun being discussed and discarded as a method of handling the problem.

Moultrie said a plan was devised in which Deputy Young would open the driver's door of the pick-up truck and reach in and disarm the suspect. Sergeant Earl was to assist Young and be his designated shooter. Moultrie said they, Abercromby, Deputy Thomas Thompson and himself, were told by Sergeant Earl to cover from the rear of the pick-up truck. He said he was given no other instructions. He said he was not told what to do if Sergeant Earl started shooting at the suspect.

Witness Deputy Andrew Vaughan said he was not a part of the discussion. He said he watched the suspect while Earl and Young conversed. Vaughan said it was his understanding that Young was going to go inside the vehicle and attempt to take control of a weapon the driver was holding in his hand. Vaughan said it was also explained that Sergeant Earl would be the designated shooter if something happened that dictated the use of deadly force. Vaughan said he does not remember receiving any instructions about whether to shoot or not to shoot.
Vaughan said when Earl and Young made their approach to the suspect vehicle, he was standing next to the passenger door of Witness Young's radio car with his weapon drawn. Vaughan said there were two spotlights affixed on the interior of the suspect's vehicle.

Witness Deputy Terence Holden said he only heard bits and pieces of their conversation. Holden said he heard that there would be a designated shooter and that they would approach the suspect on the driver's side of the vehicle to disarm him. Holden said he was not given any specific instructions on what to do except to cover the suspect. Holden said Young and Earl moved up on the driver's side of the suspect vehicle. He said the other deputies present moved to the passenger side and rear of the suspect vehicle.

Witness Deputy David Do said Deputy Young had conversations with the deputies present discussing how to handle the situation. Do said many options were discussed including possibly breaking into the passenger side of the vehicle. Do said during their conversations, Deputy Moultrie attempted to open the rear sliding cab window of the truck with a buck knife but could not get it open.

Do said Young told them that he was going to enter the suspect vehicle and attempt to disarm the suspect. Do said Young told them he would have a designated shooter with him. Do said he was not given any specific assignment, and he does not recall any other deputies being given specific assignments.

THE SHOOTING

Subject Sergeant Guy Earl said he and Deputy Sam Young approached the suspect vehicle on the driver's side. Earl said Deputy Young

opened the driver's door of the truck and reached inside towards the suspect. Earl said he was standing east of Deputy Young and to his rear near the cab of the truck in the open driver's doorway. Earl said he had his service weapon drawn and pointed towards the suspects head.

Witness Deputy Sam Young said he opened the unlocked driver's door of the pick-up truck and reached across the body of the suspect in an attempt to grab the revolver from the suspect's right hand. Young said as he reached across the suspect, he woke up and sat up erect in the driver's seat. Young said he then saw the revolver come up at his (Young's) face. Young said he felt that if he did not get control of the revolver he would be shot.

Young said he immediately grabbed the cylinder of the weapon with his left hand and grabbed the suspect's right wrist with his right hand. Young said he was draped over the suspect's lap and was able to pin the suspect's hand holding the weapon back down onto the seat. Young said they then struggled for a second or two for control of the weapon. Young said the suspect let out an angry incoherent scream as they struggled.

Subject Sergeant Guy Earl said Deputy Young opened the driver's door of the truck and reached inside towards the suspect. Earl said he was standing east of Deputy Young and to his rear near the cab of the truck in the open driver's doorway. Earl said he had his service weapon drawn and pointed towards the suspects head.

Earl said as Deputy Young went into the vehicle, the suspect awakened and let out a verbal "snarl". Earl said the suspect reached up and struggled with Deputy Young and the truck suddenly lurched forward. Earl said Young and the suspect continued to struggle and it appeared as if Young was losing the struggle. Earl said from his angle at that time, he could not see their hands or the weapon the suspect had been holding. Earl said it appeared as if the suspect was getting up and was lifting Deputy Young up with him. Earl said he feared the suspect was about to kill Deputy Young so he leaned forward fired two shots at the suspect. Earl said he heard other deputies firing at the suspect so he dropped down prone on the ground. He said he feared for his own life because he wanted to stay out of the line of fire from the other deputies. Earl said that by the virtue of the tactic he was using, he had placed himself in the line of fire with the other deputies.

Witness Deputy Sam Young said he then heard two quick gunshots next to his right ear. Young said he could not see, however he assumed it was Sergeant Earl that fired the gunshots. Young said the vehicle then lurched, or accelerated forward and collided with the patrol vehicle parked in front of it. Young said in the same instant he was then able to wrestle the weapon away from the

suspect. Young said the entire struggle lasted only five or six seconds from the time he opened the driver's door.

Young said he then stumbled back away from the cab and a multitude of shots rang out. Young said he saw other deputies, NFD, shooting at the vehicle. Young said he immediately scrambled and ran for cover and attempted to get out of the line of fire away from the vehicle. Young said he couldn't tell the other deputies he had possession of the revolver because they were firing in his direction and he was trying to get out of the line of fire.

Subject Deputy Joseph Abercromby said he saw Deputy Young reach into the truck and across the suspect to retrieve the weapon. He said he saw the suspect's head come up, turn towards Deputy Young, and the suspect raised his right arm. He said he saw a struggle between the suspect and Deputy Young. He said the suspect vehicle then immediately accelerated and surged forward approximately seven to ten feet striking a radio car parked in front of it. He said as it rolled forward, Deputy Young was drug with it and Sergeant Earl ran with the vehicle.

Abercromby said he saw the struggle was still going on between Deputy Young and the suspect. He said he heard a pop that he believed to be a gunshot and saw Earl and Young throw themselves out of the cab of the pick-up truck and out of his view. Abercromby said at that time he did not know who had fired the gunshot and he did not know for certain who, if anyone, was shot. Abercromby said he saw that the suspect was seated in a upright position in the cab of the truck and he saw his right hand coming around. Abercromby said he felt if he did not fire at the suspect, the suspect could fire at Young or Earl or at him and the other deputies.

Abercromby said he fired his shotgun at the suspect aiming at the suspect's head. He said the first blast blew out the rear window of the truck, blew out half of the drivers headrest, and impacted into the front windshield. Abercromby said he fired three more times striking the cab of the truck and the suspect. Abercromby said he saw the suspect fall down out of view inside the cab of the truck. He said he could hear other deputies firing gunshots around him, however his attention was focused forward. He said he immediately ducked down behind the rear tailgate and reloaded the shotgun with four rounds. Abercromby said he then heard someone, who he believed was Subject Sergeant Earl, yell that the suspect was dead and down and not to fire any more.

Subject Thomas Thompson said he saw Deputy Young and Sergeant Earl approach the suspect vehicle on the driver's side and open the driver's door. He said he saw Deputy Young reach into the cab of the truck. He said he saw the suspect raise his head up off his chest and bring his right hand up with a gun in it and

reach up across his body towards Deputy Young. He said simultaneously, the suspect vehicle quickly accelerated and broke traction and lunged forward striking a patrol car parked in front of it.

Thompson said he saw Deputy Young and the suspect still struggling for control of the suspect's weapon. He said he heard a gunshot shot from inside the suspect vehicle. He said he then saw Deputy Young and Sergeant Earl fall backwards out of the cab of the vehicle. He said the suspect was still sitting up in the vehicle looking towards Young and Earl. Thompson said he thought at that time the suspect had shot either Young or Earl. He said he believed the suspect would continue to shoot at them, or at the other deputies present.

Thompson said he fired one shot at the suspect's head through the rear window of the suspect vehicle. He said he lowered his weapon and fired six additional rounds through the wall of the cab on the drivers side just below the rear window. He said the suspect then fell over to his right. Thompson said he fired the rounds in that sequence consistent with what he learned in his range training. He said his first shot was to the head and the remainder were aimed at striking the suspect at center mass. Thompson said just as he fired his last shot he heard Deputy Abercromby fire a shotgun blast at the suspect and he saw the suspect fall over inside the vehicle. He said he was not aware of anyone else firing.

Subject Deputy Vincent Moultrie said he saw Deputy Young open the driver's door of the suspect vehicle and reach inside. He said he saw the suspect raise his right hand with the weapon in it and come up towards Young's face. He said he saw Young grab the weapon and struggle with the suspect for control of it. Moultrie said the suspect vehicle then suddenly accelerated forward and struck Witness Holden's radio car that had been placed in front of it. Moultrie said he saw the rear wheels spin on the suspect vehicle after it collided with the radio car as it continued to accelerate.

Moultrie said he heard a "pop" which he believed to be a gunshot from inside the pick-up truck where Deputy Young was struggling with the suspect. He said he saw Deputy Young run back away from the vehicle and saw Sergeant Earl fall backwards from the vehicle. Moultrie said he believed the suspect could have fired the gunshot he heard and believed the suspect was about to continue shooting at Young, Earl, or the other deputies. He said he was concerned the suspect was about to exit the vehicle and start shooting. Moultrie said he fired his weapon at the suspect to stop him.

Moultrie said when he stopped shooting he heard and saw Deputy Abercromby firing the shotgun at the suspect vehicle from a

crouched position from behind the rear tailgate on the driver's side. Moultrie said he was aware Deputy Thomas Thompson was shooting and saw smoke rising from where he was standing off to his left.

Moultrie said he remembers Sergeant Earl said something to the effect of cease fire or stop, however he does not remember exactly what he said.

Witness Deputy Kevin Kuykendall stated he responded to an assistance call at the location of a man with a gun inside a vehicle. Kuykendall said as he drove to the location he heard numerous units on the radio arrive at the scene and the station dispatcher cancelled any further code three responses. He said he responded westbound on Melrose Avenue and arrived at the location parking on the north curb line of Melrose Avenue. He said he saw a gray pick-up truck stopped in the number one lane of westbound Melrose Avenue with a radio car parked in front and behind it.

Kuykendall said as he walked toward the vehicle he saw deputies approaching the truck. Kuykendall said he walked westbound towards the vehicle along the northcurb of Melrose Avenue which is about twenty feet away from the truck. He said one of the deputies approached the driver's door of the vehicle and opened it. He said that Sergeant Earl was standing behind the deputy at the driver's door and he yelled out, "Sheriff's Department." He said he saw three deputies standing at the rear of the pick-up truck.

Kuykendall said the truck then accelerated forward with the tires spinning and collided with a radio car parked in front of it. He said after the truck collided with the radio car, the rear wheels of the truck still kept squealing and spinning. Kuykendall said there was a two to three second pause and then he heard one gunshot.

Kuykendall said there was a split second delay and then he heard other deputies shooting at the cab of the suspect vehicle. He said there were deputies to his left and to the rear of the pick-up truck that were firing at the truck. He said Deputy Do was standing to the left of him. He said Do backed up into him as he and Do backed away from the truck. He said they moved quickly because they were being struck by flying glass from the impact of the rounds on the truck.

Kuykendall said the gunfire continued for approximately six to eight seconds. Kuykendall said he saw Deputy Abercromby standing at the rear of the pick-up truck behind the tailgate firing. He said he saw Abercromby fire and then take cover behind the tailgate. He said in the last two to three seconds it sounded as if only two deputies were firing.

Kuykendall said he then yelled, "Stop" because he felt enough rounds had been fired and he had no target acquisition. He said Sergeant Earl then shouted, "Cease Fire" and the shots stopped.

Witness Deputy David Do said he saw Young open the driver's door and enter the truck. Do said he saw Young reach over the suspect and grab the suspect's right hand as the suspect awakened. Do said he saw Young and the suspect struggle inside the cab for possession of the revolver. Do said he could not see the gun during the struggle because of his position and due to the movements inside the cab. Do said the truck accelerated forward spinning its wheels and collided with a radio car parked in front of it. Do said he then heard a single gunshot from inside the suspect vehicle. Do said he does not know who fired the round and he did not see any muzzle flash.

Do said as he heard the shot, simultaneously the assisting deputies on the scene started firing into the cab of the truck. Do said he could not shoot at the vehicle. He stated there were deputies in his line of fire inside the truck. He said he did not see the gun and did not have target acquisition. Do said there were unknown deputies to the rear and behind him firing into the truck placing him in the line of fire. Do immediately moved to get out of the line of fire to prevent being shot by other deputies. Do also was concerned that Young or Earl would start shooting and he was in their line of fire on the passenger side of the truck.

Do said he saw Deputy Abercromby start firing his shotgun from the driver's side of the truck and as he fired, he moved to the rear of the truck. Do said he saw Moultrie firing his weapon in a point shoulder position standing out adjacent to the passenger side of the vehicle. Do said he was struck by flying glass on his left arm from the rounds fired by other deputies. Do said he quickly moved behind Moultrie to get out of his line of fire.

THE AFTERMATH

Witness Deputy David Do and Kevin Kuykendall said Deputy Young was "pretty shaken up" after the incident. Do said Young was upset because he felt he had been in the line of fire from the other deputies. Do said he felt he (Do) was in the line of fire when the other deputies were firing at the vehicle. Do said he did not feel it was appropriate for him to fire at the time the other deputies did.

Witness Deputy Kevin Kuykendall said it appeared to him (Kuykendall) that the other deputies had fired into the cab when Young was still inside or just outside the cab struggling with the suspect. Kuykendall said a portion of his view into the cab

was blocked by the truck bed and support pillars.

Witnesses [redacted] and [redacted] stated they were walking westbound on the northside of Melrose Boulevard west of San Vicente Boulevard. They stated they heard the shooting and dropped to the ground and took cover. They stated they did not see the shooting.

Three witnesses were located that were not part of the original criminal or administrtive investigation. Their names were obtained from a copy of the civil claim filed by the [redacted] of the suspect, refer to Exhibit "C". They were identified as [redacted] and [redacted] All three stated they had not witnessed the shooting. All of them stated they heard the gunfire and went to the scene to see what had happened. They all observed the crime scene and the aftermath of the criminal investigation.

Witness [redacted] stated that on November 27, 1991 at approximately 0100 hours he was working at his office located at [redacted] in [redacted] He said his office is located on the ground story and is one building [redacted] of Melrose Boulevard on the [redacted] side of San Vicente Boulevard. He said he was startled when he heard what sounded like a full roll of firecrackers going off. He said it sounded as if possibly twenty five gunshots were fired. He said approximately five to eight minutes later, he heard an ambulance siren and that prompted him to walk outside to see what was going on. He said prior to the ambulance siren he did not hear any other sirens.

Witness [redacted] said he saw that an overweight, male white deputy, approximately forty-five years old with a double chin, with dark hair, appeared jovial and "very pleased" with the shooting situation. He said the deputy was not wearing stripes and might have a moustache, however he was not sure. [redacted] said he believes he could pick out a picture of the deputy if he saw him again.

IAB NOTE: The general description provided by [redacted] was close to Subject Sergeant Guy Earl in age, race, hair, and stature. However, Sergeant Earl would have been wearing stripes on his uniform.

[redacted] viewed a "six-pack" photo line up with a picture of Sergeant Earl in it and said he did not see the deputy he described in the line-up. Refer to Exhibit "D" for the line-up.

Deputy Roy Burns was interviewed to examine the issue raised by Subject Guy Earl concerning a similiar training scenario he had heard of. Training records for Sergeant Earl show he attended

Laser Village training on [redacted] His training records are listed under Exhibit "K" which is the original shooting evaluation report. Within that report they are listed as Exhibit "N".

Witness Deputy Burns stated he has been assigned to the Laser Village complex as a trainer since September 1990. He stated that the curriculum for Laser Village I at that time utilized a role-playing scenario which depicted a person unconscious in a vehicle with a handgun under his right leg. He said the suspect had his hand in a close proximity to the firearm. An outline for the training scenario is included in Exhibit "E".

Burns said the scenario was taught with only two officers and not as a group problem. He said time constraints prevented this from being done. He said no radio cars were used because at the time none were assigned to the Laser Village Training Complex. He said the problem was taught up on a dirt track at the training complex and the officers would start the problem on foot. Burns said there was no discussion of placement of radio cars as part of the instruction. Burns said the need to plan and consider alternatives was discussed as part of the instruction.

Witness Burns said he was instructed to teach the students to attempt to make verbal contact with the occupant of the vehicle from a safe location behind cover. He said this would involve voice commands. He said if this did not work, they were instructed to use the public address system of their patrol vehicle to arouse the occupant in the vehicle. He said if that did not work, they were then instructed to try and activate the siren of their patrol vehicle to see if that would arouse the occupant. He said it was discussed that articles could be thrown at the vehicle to arouse the occupant, however it was not part of the lesson plan.

Witness Burns said if this failed to arouse the occupant, he would instruct the students to make a tandem dual officer tactical approach. He said the approach would occur from the rear of the suspect vehicle and on the side of the vehicle that the occupant was seated on. One officer would approach high with his weapon drawn and pointed towards the vehicle, and one officer would approach low with the option of having his weapon holstered. He said the low officer was taught to open the vehicle door, reach in and take control of the weapon from the suspect, while being covered by the second officer. He said if there was an encounter in which there was a struggle for the weapon, and the cover officer believed the contact officer's life was in danger, the cover officer was instructed to shoot and neutralize the suspect.

Burns said he believed the technique was taught when he was assigned, September 1990, until approximately mid 1991. He said

it was dropped from the curriculum because more important scenarios were developed for training. Burns said if the scenario was taught today it would be taught the same way. He said he is not comfortable with the technique because it sends two officers close to an armed suspect. He said the "distance safety factor", which equates distance with safety in allowing officers time and space to react to situations, is not that good in that situation. Burns said he believes an officer's chances for survival are minimized in situations where an officer intentionally moves into a close distance with an armed suspect.

Burns said if he was to teach the scenario today (July 1992), he would try and allow for the use of less than lethal methods first before moving to the two officer tactical approach. He said the "Arwen" may be an option based upon the circumstances. He said he would not recommend the use of the "Taser". He said the "Taser" would cause the suspect to move involuntarily and would cause the suspect to move his body and hands. The deputies would not be able to tell if the suspect was moving his hands in response to the taser or if he was moving to shoot them. He said he did not feel the baton was appropriate because it placed the officers at too much of a risk and was not certain of being able to prevent the suspect from using the weapon. Burns said he would teach today for the officers to attempt to bump the vehicle with their radio car prior to the tactical approach.

Witness Burns said he did not know where the techniques originated from or how it was determined they would be taught for this scenario.

The criminal investigators determined that Sergeant Earl fired a total of thirteen rounds, Deputy Abercromby fired four shotgun rounds, Deputy Thompson fired seven rounds, and Deputy Moultrie fired fifteen rounds. The full statements provided to the criminal investigators are in the original shooting evaluation, Exhibit "K" under Exhibit "R" within that report.

The original shooting evaluation, Exhibit "K", contains the autopsy report on Suspect Charles King and the firearms report from the Sheriff's crime lab.

The autopsy report showed the supect had a alcohol level of .19 in his system. He also had a .25 level of methamphetamine and .06 level of amphetamine. The autopsy report showed the suspect had sustained eleven gunshot wounds. The suspect sustained three gunshots to the head from medium calibre jacket rounds. He sustained one to the left chest and one to the abdomen from medium calibre jacket rounds. He sustained one perforating grazing wound to the scrotum. He sustained one through and through gunshot wound to his left forearm. He sustained one through and through wound to his right hip from a jacketed round. He sustained one shotgun wound to his upper left arm and another

one to his left armpit. He sustained a through and through wound to his left calf.

The firearms report from the Sheriff's crime lab revealed that three of the eight expended bullets recoverd by the coroner from the suspect during the autopsy were fired by Sergeant Earl. Two were determined to have been fired by Deputy Moultrie. The three other expended bullets were fragments that had no comparison value.

The revolver recovered from the suspect had the serial numbers filed off. The Sheriff's crime lab was able to restore the number and it matched a weapon stolen in a burglary in the City of Downey report #91-11364 on 11/14/91.



IRA REINER, DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES
SPECIAL INVESTIGATIONS DIVISION
CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-3275

(213) 974-2339

April 24, 1992

Captain Kenneth Smith
Los Angeles County Sheriff's Department
Homicide Bureau
211 West Temple Street
Los Angeles, California 90012

Dear Captain Smith:

In re: S.I.D. FILE NO. 100-7187/91-0567
L.A.S.D. FILE NO. 091-13236-0972-055

The Special Investigations Division of the Los Angeles County District Attorney's Office has concluded its review of the November 27, 1991, fatal shooting of Charles King by Los Angeles County Sheriff's Department Deputies Guy Earl, Vincent Moultrie, Thomas Thompson, and Joseph Abercromby.

We were notified of the incident within one hour of its occurrence. Deputy District Attorney Eloise Phillips and District Attorney Senior Investigator [redacted] responded to the scene and were briefed by Lieutenant Joseph Brown. We have reviewed the 242-page report prepared by your Homicide Bureau. Senior Investigator [redacted] also attended the autopsy and spoke with two civilian witnesses. There is insufficient evidence to show that the actions of each of these deputies was unreasonable under the circumstances.

FACTUAL SUMMARY

At approximately 12:30 a.m., [redacted] was driving westbound on Melrose Avenue when he pulled behind a gray pickup truck at the corner of San Vincente Boulevard. [redacted] noticed that although the pickup's engine was running and headlights were on, the brake lights were still activated even though the signal for the westbound traffic was green. When [redacted] pulled next to the pickup he noticed that the driver, Charles King, had his chin down on his chest and appeared to be unconscious. After a few minutes, [redacted] called 911 regarding the man in the pickup.

Deputy Sam Young responded to the radio call relating to a possible drunk driver passed out in a truck on Melrose near San Vincente. At 1:04 a.m., Young stopped his car behind the pickup and with the aid of his spotlight,

he noted there was one person in the truck seated behind the steering wheel with his head slumped forward. Young approached the driver's side; he could smell an odor of an alcoholic beverage from inside the pickup. The engine was running and the headlights were on.

Other units began to respond within moments. Deputy Holden approached the passenger side of the pickup and was the first to notice that King had a gun. He immediately warned Young of the gun. Young then noticed that King held a revolver in his right hand and had his finger on the trigger.

After discussing all their options, Sergeant Guy Earl and Young decided on a plan to relieve King of his gun. Young was to physically remove the gun from King while he was passed out. Young was unarmed to avoid the possibility of being injured by his own gun. Earl was to be the immediate backup and he would be the one to shoot King in the event such force became necessary. Deputies Vincent Moultrie, Thomas Thompson and Joseph Abercromby went to the rear of the pickup to cover Earl and Young.

Deputy Young opened the driver's door and when he reached in to grab the gun, King awoke and began to struggle with Young. As Young and King struggled for the gun the pickup lurched forward hitting the patrol car that had been parked in front of the pickup to prevent its escape. Almost simultaneous with the truck lurching forward Young heard two shots near his right ear. At that time Young managed to gain possession of King's gun and immediately jumped back out of the truck.

Earl was outside the open driver's door of the pickup when Young entered to try and remove King's gun. Earl had his gun pointed directly at King's head to avoid the possibility of hitting Young. Earl watched the struggle. When the truck moved forward, fearing that Young might be injured by King, Earl shot one round at King's head. Earl saw King still moving and fearing he might be in the line of fire, quickly moved back away from the truck and went to the ground. Earl could hear other shots being fired but was uncertain from where they originated. He continued, firing twelve more shots at King.

Moultrie, Abercromby and Thompson all saw King raise the arm that held his gun, saw the truck peel forward, and heard a gunshot originating from inside the cab. Almost immediately thereafter, they saw both Young and Earl falling back away from the pickup. Each deputy believed that King was still in possession of the handgun. Fearing for the well-being of both Young and Earl, each deputy shot at King. Numerous shots were fired in a matter of seconds: Moultrie fired sixteen rounds and Thompson fired seven rounds from their semiautomatic handguns; Abercromby fired four rounds from his shotgun. King, who had been [redacted] King's gun contained six live

rounds. The serial number had been obliterated. When the number was restored, the gun was tentatively identified as stolen in a Downey residential burglary thirteen days before.

The autopsy revealed that King received ten gunshot wounds and numerous grazing wounds. He received three gunshot wounds to the head, two to the back and one to the left side. He suffered two gunshot wounds to his torso, front to back. He received six to ten additional wounds. The cause of death was attributed to those wounds.

LEGAL CONCLUSION

California law permits the use of deadly force in the defense of another if it appears the person claiming the right of defense of another actually and reasonably believed that there was imminent danger of great bodily injury or death. People v. Williams, 75 Cal. App. 3d 731 (1977).

In protecting another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions--Criminal (CALJIC) 5.30, 5.32.

From the moment that King awoke and began struggling with Deputy Young over the gun, Young was at risk of being shot either accidentally or intentionally by King. When King caused the truck to move forward he gave every appearance of trying to cause great bodily harm to Young. Sergeant Earl lawfully attempted to defend Young, knowing that Young was unarmed.

When the other deputies heard the shot fired by Earl coming from the cab area of the truck, they believed that either Young or Earl was in danger or they both were. In their defense, the deputies then shot at King.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins, 189 Cal. App. 2d 575, 589 (1961). The action taken by each of the deputies involved here occurred in a matter of seconds.

The fact that Young had already gained possession of King's gun before the majority of the shots were fired is not dispositive. None of the deputies who were shooting knew Young had taken the gun. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury one may act upon those appearances. This right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo, 85 Cal. App. 2d 577 (1948); CALJIC 5.51.

Accordingly we find that the actions of Sergeant Earl, Deputy Abercromby, Deputy Thompson, and Deputy Moultrie were not so unreasonable as to be unlawful. We therefore consider the matter closed and will take no further action.

Very truly yours,

IRA REINER
District Attorney

R. DAN MURPHY
Assistant District Attorney

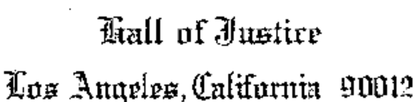
By Eloise Phillips

ELOISE G. PHILLIPS
Deputy District Attorney

mhm

cc: Sergeant Guy Earl
Deputy Joseph Abercromby
Deputy Thomas Thompson
Deputy Vincent Moultrie

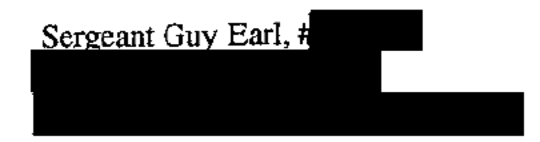






SHERMAN BLOCK, SHERIFF

February 27, 1994


Sergeant Guy Earl, #[redacted]

Dear Sergeant Earl:

On September 28, 1993, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number 091-1117. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond, and did review the material on October 1, 1993. After reviewing the response submitted to support your position, the Department executives have amended the recommended discipline.

You are hereby notified that your Unit Commander has suspended you without pay from your position of Sergeant, Item No. 2717A, with this Department, for a period of five (5) days. However, pursuant to a settlement agreement between you and the Department, two (2) days will be held in abeyance for a period of one year commencing on November 30, 1993. Should you become the subject of a founded administrative investigation with similar violations, within the prescribed time period, the remaining two (2) days will be imposed. It should be noted, however, that all Departmental records will reflect that you received a five (5) day suspension.

The effective dates of the three (3) day suspension are from February 28, 1994, through March 2, 1994.

This action is based on the fact that you have violated the following sections of this Department's Manual of Policy and Procedures: 3-01/010.45, Supervisors and 3-01/020.20, Responsibility for Completion of Duty.

An investigation under File Number 091-1117, conducted by the Internal Affairs Bureau, coupled with your own statements, has established that on November 27, 1991, at approximately 0123 hours, you were assigned as a uniformed patrol sergeant at West Hollywood Station, working Unit #90S. You said you responded to the intersection of San Vicente Boulevard and Melrose Boulevard, in the City of West Hollywood, in response to a request for assistance from another unit regarding a man with a gun in a vehicle.

When you arrived at the intersection, there were five other deputies present. You approached the suspect vehicle on foot, which was stopped in the street with the engine running. You said you saw that the suspect, who was seated in the driver's seat, was unconscious and was holding a revolver in his right hand down at his side.

You and the deputies at the scene talked about how to handle the situation. You said you mentally dismissed the option of using a "felony vehicle stop" tactic of getting behind cover and calling the suspect out of the vehicle. You said you ruled this option out because you were fearful of what the suspect might do when he was awakened.

Deputy Sam Young, [redacted] suggested that he open the driver's door of the suspect vehicle and reach in and physically disarm the suspect while he was still unconscious. Deputy Young suggested that you act as cover and be the designated shooter at his side while he opened the driver's door and removed the gun from the suspect's right hand. You decided this would be the plan of action.

Excluding Deputy Young and you, there were seven other deputies on the scene at that time. They were Joseph Abercrombie, [redacted] David Do, [redacted] Terence Holden, [redacted] Kevin Kuykendall, [redacted] Vincent Moultrie, [redacted] Thomas Thompson, [redacted] and Andrew Vaughan, [redacted]

You said you told the other deputies that Deputy Young was going to disarm the suspect and you were going to be the designated shooter. You said you told Deputies Abercromby, Moultrie, and Thompson to go to the rear of the vehicle and take cover. The other deputies, Do, Holden, Kuykendall, and Vaughan, received no specific instructions from you.

You and Deputy Young approached the suspect vehicle on the driver's side. When Deputy Young opened the door and attempted to grab the weapon, the suspect awakened and started fighting with Deputy Young. The suspect vehicle suddenly accelerated and lunged forward into a parked radio car. You stated that you saw Deputy Young and the suspect continue to struggle for possession of the suspect's weapon. You said you were standing next to the open driver's door of the suspect vehicle as Deputy Young was leaning into the passenger compartment on the same side. You said you believed the suspect was going to shoot Deputy Young, so you leaned forward and fired two rounds at him.

You said you then heard other gunshots coming from the other deputies, so you dropped to the ground to be out of the line of fire. Three other deputies (Abercrombie, Moultrie, and Thompson) fired at the suspect from positions adjacent to the rear and passenger side of the suspect vehicle. All three claimed to have target acquisition on the suspect.

Deputy Young said he had to quickly retreat from the driver's side of the suspect vehicle to avoid being struck by gunfire that was being fired by the other deputies adjacent to the rear and passenger side of the suspect vehicle.

Deputies Do and Kuykendall stated they had to quickly retreat from their position on the passenger side of the suspect vehicle because they were in a crossfire situation and were being struck with flying metal and window glass.

You said as you lay on the ground next to the driver's door of the suspect vehicle, you saw that the suspect was still moving. You said you did not see Deputy Young and you were afraid the suspect would shoot you. You said you again fired at the suspect. The suspect died at the scene as a result of multiple gunshot wounds.

It was determined you fired sixteeen rounds at the suspect. Deputy Abercrombie fired four shotgun rounds, Deputy Moultrie fired sixteen rounds, and Deputy Thompson fired seven rounds at the suspect.

You exercised poor judgement in this matter when you elected to be a designated shooter and failed to act as a supervisor for the eight subordinate personnel present. Your actions put you in a position where you were unable to take responsibility and provide authority for the situation and your subordinates. By making yourself the designated shooter, you put yourself in a position where you were unable to determine if your subordinates were performing their duties completely, and in compliance with Department Policy.

Your poor judgement and positioning did not allow you to accept responsibility for achieving the essential objective at hand. Your failure to provide leadership and discipline at the time of the incident led to the eight deputies present reacting independently to the suspect's actions. Their independent reaction led to a "contagious fire" situation and provided for a nearly disastrous cross fire between the deputies involved.

By your actions, you have brought discredit and embarrassment to yourself and the Department.

Prior to recommending this disciplinary action, your Unit Commander has thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

SHERMAN BLOCK, SHERIFF

Bert J. Cueva, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

BJC:SBJ:arm

cc: Civil Service Advocacy
William A. Baker, Chief, Field Operations Region II
Internal Affairs Bureau
Personnel Services
Payroll Unit
West Hollywood Station/Unit Personnel File